

ALCOHOLIC BEVERAGES DIVISION[185]

Notice of Intended Action

Proposing rule making related to personal importation of alcoholic liquor, wine, and beer and providing an opportunity for public comment

The Alcoholic Beverages Division hereby proposes to adopt new Chapter 9, “Personal Importation of Alcoholic Liquor, Wine, and Beer,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 123.10.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2018 Iowa Acts, Senate File 2347.

Purpose and Summary

This proposed rule making implements 2018 Iowa Acts, Senate File 2347. Proposed new Chapter 9 establishes a procedure for the issuance of a waiver for an individual of legal age desiring to import alcoholic liquor, wine, or beer in excess of the amount provided in Iowa Code section 123.22 as amended by 2018 Iowa Acts, Senate File 2347, section 2; Iowa Code section 123.171 as amended by 2018 Iowa Acts, Senate File 2347, section 5; or 2018 Iowa Acts, Senate File 2347, section 4, as applicable. The Alcoholic Beverages Commission approved the proposed new chapter of rules at its meeting held on June 13, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Granting or denying a request for the issuance of a waiver pursuant to new Chapter 9 is final agency action under Iowa Code chapter 17A. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 185—Chapter 19.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Alcoholic Beverages Division no later than 4:30 p.m. on August 7, 2018. Comments should be directed to:

Stephanie Strauss
Alcoholic Beverages Division
1918 S.E. Hulsizer Road
Ankeny, Iowa 50021
Email: strauss@iowaabd.com

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** 185—Chapter 9:

CHAPTER 9

PERSONAL IMPORTATION OF ALCOHOLIC LIQUOR, WINE, AND BEER

185—9.1(123) Tax liability. The division makes no judgment or decision regarding any tax liability resulting from the personal importation of alcoholic liquor, wine, or beer as provided in Iowa Code section 123.10 as amended by 2018 Iowa Acts, Senate File 2347, section 1; Iowa Code section 123.22 as amended by 2018 Iowa Acts, Senate File 2347, section 2; Iowa Code section 123.171 as amended by 2018 Iowa Acts, Senate File 2347, section 5; or 2018 Iowa Acts, Senate File 2347, section 4, as applicable.

185—9.2(123) Personal importation in excess of the amounts provided—waiver. The administrator may provide for the issuance of a waiver for an individual of legal age desiring to import alcoholic liquor, wine, or beer in excess of the amounts provided in Iowa Code section 123.22 as amended by 2018 Iowa Acts, Senate File 2347, section 2; Iowa Code section 123.171 as amended by 2018 Iowa Acts, Senate File 2347, section 5; or 2018 Iowa Acts, Senate File 2347, section 4. The decision on whether the circumstances justify the issuance of a waiver shall be made at the discretion of the administrator upon consideration of all the relevant factors.

9.2(1) Criteria. The division may, in response to a completed request, issue a waiver, as applied to the circumstances of a specific situation if the division finds each of the following:

- a. The requester is an individual of legal age;
- b. The requester is an individual who was domiciled outside the state within one year of the request;
- c. The alcoholic liquor, wine, or beer imported pursuant to the waiver shall be only for personal consumption in a private home or other private accommodation and only if it is not sold, exchanged, bartered, dispensed, or given in consideration of purchase for any property or services or in evasion of the requirements of Iowa Code chapter 123; and
- d. The alcoholic liquor, wine, or beer imported pursuant to the waiver shall be in unopened original containers.

9.2(2) Domicile. Domicile, for the purposes of establishing when an individual is “domiciled outside the state,” shall be determined in accordance with rule 701—38.17(422).

9.2(3) Request. All requests for a waiver to import alcoholic liquor, wine, or beer in excess of the amount provided in Iowa Code section 123.22 as amended by 2018 Iowa Acts, Senate File 2347, section 2; Iowa Code section 123.171 as amended by 2018 Iowa Acts, Senate File 2347, section 5; or 2018 Iowa Acts, Senate File 2347, section 4, shall be submitted in writing by completing a request for import authorization form and returning it to the division, as instructed.

9.2(4) *Content of form.* A request for import authorization form shall be prescribed by the division and shall include the following information: the name, date of birth, and personal contact information of the requester; full residential history of the requester for the past three years without gaps; a statement of reasons that the requester believes will justify import authorization; the destination address for the imported alcoholic beverages; the name, date of birth, and personal contact information of the recipient of the alcoholic beverages, if different from that of the requester; a detailed inventory of the alcoholic beverages for which the requester seeks import authorization; and any other information the administrator may require.

9.2(5) *Burden of persuasion.* When a request is filed for a waiver pursuant to this rule, the burden of persuasion shall be on the requester to demonstrate by clear and convincing evidence that the division should exercise its discretion in the granting of the waiver.

9.2(6) *Notice.* The division shall acknowledge a request for a waiver upon receipt of a completed request for import authorization form.

9.2(7) *Additional information.* Prior to granting or denying a request for a waiver, the division may request additional information from the requester relative to the request and surrounding circumstances.

9.2(8) *Investigation.* The division may conduct an investigation as the administrator deems necessary to determine that the requester meets the criteria in subrule 9.2(1) or to verify the accuracy of the information provided by the requester.

9.2(9) *Ruling.* A letter granting or denying a request for a waiver to import alcoholic liquor, wine, or beer in excess of the amount provided in Iowa Code section 123.22 as amended by 2018 Iowa Acts, Senate File 2347, section 2; Iowa Code section 123.171 as amended by 2018 Iowa Acts, Senate File 2347, section 5; or 2018 Iowa Acts, Senate File 2347, section 4, shall be in writing and shall contain a description of the precise scope and duration of the waiver if one is issued.

9.2(10) *Duration of waiver.* A waiver issued pursuant to this rule shall allow only for the importation of the inventory of alcoholic beverages detailed on the request for import authorization form. If a waiver is granted, there is no automatic right to renewal.

9.2(11) *Public availability.* The division shall maintain a record of all waivers granted or denied under this rule. All rulings in response to requests for waivers shall be indexed and available to members of the public at the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa 50021. Waivers containing information that the division is authorized or required to keep confidential shall be edited prior to public inspection.

9.2(12) *Cancellation.* A waiver issued by the division pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice, the division finds any of the following:

- a.* The requester of the waiver withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- b.* The recipient of the waiver has failed to comply with any of the conditions contained in the waiver.

9.2(13) *Violations.* Violation of a condition in a waiver is equivalent to a violation of Iowa Code section 123.10 as amended by 2018 Iowa Acts, Senate File 2347, section 1; Iowa Code section 123.22 as amended by 2018 Iowa Acts, Senate File 2347, section 2; Iowa Code section 123.171 as amended by 2018 Iowa Acts, Senate File 2347, section 5; or 2018 Iowa Acts, Senate File 2347, section 4, as applicable. The recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the applicable Iowa Code or Iowa Acts section.

9.2(14) *Defense.* After the division grants a waiver under this rule, the waiver is a defense within its terms and the specific facts indicated therein for the recipient of the waiver in any proceedings in which the waiver in question is sought to be invoked.

9.2(15) Appeals. Granting or denying a request for a waiver is final agency action under Iowa Code chapter 17A.

These rules are intended to implement 2018 Iowa Acts, Senate File 2347, section 4, and Iowa Code sections 123.10, 123.22, 123.59 and 123.171 as amended by 2018 Iowa Acts, Senate File 2347.